

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STERILE CONTAINMENT
TECHNOLOGIES, LLC

Plaintiff,

v.

NELSON LABORATORIES, INC.

Defendant.

No. C 06-3852 PJH

**ORDER DENYING MOTION FOR
RULE 11 SANCTIONS**

The motion of defendant Nelson Laboratories, Inc. ("Nelson") for Rule 11 Sanctions Against Plaintiff Sterile Containment Technologies, LLC ("Sterile") and Plaintiff's counsel came on for hearing on April 18, 2007. Having carefully read the papers filed in conjunction with the motion and considered the arguments of counsel and the relevant legal authority, the court hereby DENIES Nelson's motion for sanctions for the following reasons and for the other reasons stated at today's hearing.

Nelson moves for dismissal of plaintiff's fifth cause of action for fraud and deceit and for fees in bringing the instant motion under Federal Rule of Civil Procedure 11. However, the court does not find that Sterile's allegations of fraud are so egregious as to warrant a dismissal sanction, especially here where defendant has bypassed the procedures under Rule 12(b)(6) and Rule 56. See Gemisys Corp. v. Phoenix American, Inc., 186 F.R.D. 551, 557 (N.D. Cal. 1999). On the record before it at this stage, the court cannot determine that plaintiff's attorney failed to conduct a reasonable and competent inquiry before signing and filing the complaint and that complaint is legally or factually baseless from an objective perspective where Nelson has conceded in its reply brief that Sterile's theory appears to at least superficially satisfy the elements of fraud on its face. See Holgate v. Baldwin, 425

1 F.3d 671, 676 (9th Cir. 2005).

2 In sum, the court does not find that this case is the "rare and exceptional case where
3 the action is clearly frivolous, legally unreasonable or without legal foundation, or brought
4 for an improper purpose." Operating Eng's Pension Trust v. A-C Co., 859 F.2d 1336, 1344
5 (9th Cir. 1988). Accordingly, defendant's motion is DENIED.

6 **IT IS SO ORDERED.**

7 Dated: April 18, 2007



PHYLLIS J. HAMILTON
United States District Judge